

UNIVERSITI MALAYA & ANOR

a

v.

PENTADBIR TANAH WILAYAH PERSEKUTUAN
KUALA LUMPUR

b

HIGH COURT MALAYA, KUALA LUMPUR

ABDUL HAMID SAID J

[APPLICATION NO: S2-15-05-2000]

14 OCTOBER 2002

LAND LAW: *Acquisition of land - Compensation - Award by Land Administrator - Whether only an offer - Whether decision thereof administrative in nature - Objection vide Form N - Reference to High Court - Whether as of right - Whether unfettered - Land Acquisition Act 1960, ss. 3, 12, 37, 38(1) - Rules of High Court 1980, O. 18 r. 19, O. 92*

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The first applicant's two pieces of land were acquired by the Government pursuant to s. 12 of the Land Acquisition Act 1960 ('the Act'). The acquisition was applied for by the second applicant ('LLM') with a view of constructing a highway thereon. At the enquiry held by the Land Administrator, the Land Administrator decided that he would make the award at a later date in the absence of the parties, and that the parties were at liberty to file the relevant Form N under s. 38 of the Act if unsatisfied with the award. It was not disputed that no valuation report was submitted at the enquiry and nor was the issue of compensation deliberated upon by the Land Administrator then. Subsequently, the Land Administrator considered the valuation reports as sent him by the parties, but adopted the valuation as proposed by the Government valuer. LLM objected to the compensation, and hence filed Form N for a reference of the matter to the High Court. The first applicant ('UM') argued that LLM, having not submitted the valuation report at the enquiry, was estopped from filing the Form N, and in the circumstances, applied for the reference to be struck out under O. 18 r. 19 Rules of the High Court 1980 ('RHC').

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Held:

[1] The enquiry herein was an enquiry within the strict sense of the word, namely to ask. At the end of the enquiry the Land Administrator made it clear that it was an award and offer of compensation. The framers of the Act must have in mind that the award was an offer, and left it to the court to decide judicially on the objections. (pp 609 c-e)

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- a* [2] The objection under s. 38(1) of the Act is a reference by the Land Administrator to the court. Such reference is not in the nature of an appeal from the Land Administrator's award. Rather, it is in the nature of an original hearing. (p 609 a)
- b* [2a] Taking into consideration and s. 44(2) of the Act which obliges the court to consider the interests of all persons interested who have not accepted the award, and the relevant authorities, the decision of the Land Administrator is an administrative decision. Hence the right to file Form N to object to the award made by the Land Administrator. (p 609 f-g)
- c* [3] The acquisition of the land was for LLM and LLM had to pay for the land acquired. As the body that has to meet the award and offer of compensation, LLM definitely has a say in the finding of the Land Administrator. In the circumstances, the award and compensation being only an offer and not final, it would be an injustice to strike out LLM from being heard in the court. Clearly, this is not a proper case to use the provisions in the RHC to strike out LLM's reference. (p 612 a)
- d*

[Application dismissed.]

e **Case(s) referred to:**

Ahmat Gani & Ors v. Superintendent of Lands and Surveys, First Division [1978] 1 MLJ 253 (**refd**)

Asst Development Officer Bombay v. Tayaballi Allibhoy Bohori AIR [1933] Bom 361 (**refd**)

f *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 SC (**refd**)

Collector of Land Revenue v. Alagappa Chettiar; Collector of Land Revenue v. Ong Thye Eng and Cross Appeals [1971] 1 MLJ 43 (**refd**)

Maorgate Mercantile Co Ltd v. Twithings [1976] 1 QB 725 (**refd**)

Permodalan MBf Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244 (**refd**)

g *Yew Lean Finance Development (M) Sdn Bhd v. Director of Lands & Mines, Penang* [1977] 2 MLJ 45 (**refd**)

Legislation referred to:

Land Acquisition Act 1960, ss. 3(1), 12, 37(3), 38(1), 44(2)

Rules of the High Court 1980, O. 15 r. 6(2)(a), O. 18 r. 19, O. 92 r. 4

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For the 1st applicant - M/s Cheah Teh & Su

For the 2nd applicant - M/s CM Phang & Co

For the respondent - A-G's Chambers

Reported by WA Sharif

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JUDGMENT

Abdul Hamid Said J:

The first applicant in this case (UM) is the owner of two pieces of land described as Lot 5270 Grant 6768, Mukim Kuala Lumpur and Lot 10476, Grant 6767, Mukim Kuala Lumpur. These two pieces were acquired for “Projek Lebuhraya Skim Penyuraian Trafik Kuala Lumpur – Barat (Pakej A & B: peringkat 1)”

An enquiry under s. 12 of the Land Acquisition Act 1960 (LAA 1960) was held on 10 December 1998 in the presence of among others, the representatives from DM and the representatives of the agency applying for acquisition ie, Lembaga Lebuhraya Malaysia (LLM), the second applicant in this case.

In his decision on the date of this first enquiry, the Wilayah Persekutuan Land Administrator said “... Perintah ‘awad’ akan dibuat tanpa kehadiran pihak-pihak yang terlibat. Prosidur untuk membuat bantahan terutama mengenai had tempuh masa untuk memfailkan Borang N mengikut Seksyen 38 Akta Pengambilan Tanah 1960 sekiranya ada pihak yang tidak puashati terhadap pemberian atau tawaran pampasan Pentadbir Tanah, telah dimaklumkan kepada semua pihak yang hadir.”

From the above it is obvious that there was no order for the parties to put in their valuation report. It is obvious too that the agency applying to acquire the land was a party at the enquiry.

Going through the notes of the Land Administrator as appended in encl. 4 at HA1, I note that the purpose of this first oral enquiry was not to determine the value of the two pieces of land. The valuation was done much later as will be seen hereinafter. The valuation report put up by UM was “heard” (tanpa kehadiran pihak-pihak yang terlibat) on 9 January 1999. Whereas the valuation report from the Government was considered only on 19 June 1999. It was at these separate “hearings” some five months apart that the Land Administrator decided “... cadangan nilaian yang diberikan oleh Penilai Kerajaan adalah munasabah dan berpatutan” ie, to accept the valuation by the Government Valuer.

Form N was filed by the second applicant on 27 July 1999 based upon their interest by virtue of s. 37(3) Land Acquisition Act 1960. The objection by LLM was only on the amount of compensation awarded by the Land Administrator.

- a* The first applicant objected to the Form N filed by the second applicant. UM therefore applied to this court that the reference to this court should be struck off or dismissed under O. 18 r. 19 Rules of High Court 1980 and/or under O. 15 r. 6(2)(a) Rules of High Court 1980 ie, misjoinder or non-joinder of the second applicant and/or under O. 92 r. 4 of Rules of High Court 1980 ie, under the inherent powers of the court.
- b*

The reason given by the first applicant in the application is that since LLM failed to submit their valuation at the inquiry they are precluded from filing the Form N under s. 37 of the LAA 1960. The argument put forward is that they are estopped from filing Form N.

c **The "Enquiry" Before The Land Administrator**

- Section 12 of the LAA 1960 says that the Land Administrator shall make a full enquiry into the value of all scheduled lands and "shall as soon as possible thereafter assess the amount of compensation ... Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14."
- d*

- The word used in the LAA 1960 is enquiry. Enquiry which is a noun means "the act or an instance of asking or seeking information" – see *Concise Oxford Dictionary*, 9th edn. This dictionary differentiates enquiry from inquiry which means a formal investigation. Since the LAA 1960 used the word enquiry, I would take that the proceeding before the Land Administrator on 10 December 1998 was only to ask even though the parties representing the parties were required to take oath to tell the truth.
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- f* The first issue posed was whether the decision by the Land Administrator was judicial or administrative.

- At the end of the enquiry on 10 December 1998 the Land Administrator made the decision that if any party was not satisfied with the award and offer of compensation by the Land Administrator ... (sekiranya ada pihak yang tidak berpuashati terhadap pemberian dan tawaran pampasan Pentadbir Tanah) can file Form N in accordance with s. 38 LAA 1960 which is the Form used for objecting to the award made by the Land Administrator.
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- The Privy Council in *Collector of Land Revenue v. Alagappa Chettiar, Collector of Land Revenue v. Ong Thye Eng and Cross Appeals* [1971] 1 MLJ 43 (*Allagappa's case*) held that "... the reference in the High Court is not in the nature of appeal from the collector's award. It is in the nature of an original hearing ...". This decision was followed by the Federal Court in *Ahmat bin Gani & Ors. v. Superintendent of Lands and Surveys, First Divison* [1978] 1 MLJ 253 (*Ahmad Gani*) – see p. 255.
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- i*

I remind myself that any objection under s. 38(1) of the LAA 1960 is a reference. This sub-section is clear when it says “Any objection made under s. 37 shall be made by written application in Form N to the Land Administrator requiring that he refers the matter to the Court for its determination ...” To emphasise it is a reference by the Land Administrator to the court. Hence the hearing before the High Court is an original hearing.

The Indian High Court in *Asst Development Officer Bombay v. Tayaballi Allibhoy Bohori* AIR [1933] Bom 361 (*Bombay’s case*) held that the proceedings before the acquiring officer are “... administrative rather than judicial.” The said High Court went on to say that the “... acquiring officers award is, of course, strictly speaking not an award at all, but an offer. It is based on an inquiry and inspection ...” I would prefer to use the word enquiry even though at times enquiry and inquiry are used interchangeably – see the *Concise Oxford Dictionary*. If the enquiry is taken to mean to ask and the proceedings administrative and the hearing in the High Court is an original hearing, the award made is not a ‘final judgment or decision, especially by an arbitrator or by a jury or to grant by formal process or by judicial decree’ – see *Black’s Law Dictionary*.

The enquiry held on 10 December 1998 was an enquiry within the strict sense of the word. At the end of the enquiry the Land Administrator made it clear that it was an award and offer of compensation. In the *Bombay’s* case the award was “... not an award but an offer.” The framers of the Land Acquisition 1960 must have in mind that the award was an offer and left it to the court to decide judicially on the objections (s. 38(1)) of LAA 1960. The court then shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not.” – see s. 44(2) LAA 1960. The interested person could, to my understanding, be considered even though that person has not made an objection at the enquiry.

Taking into consideration the three cases cited above it is concluded that the decision made by the Land Administrator is an administrative decision. Hence the right to file Form N to object to the award made by the Land Administrator. My decision is further strengthened by s. 44(2) LAA 1960 which reads:

- a* 44(2)The Court shall consider the interests of all persons interested who have not accepted the award, whether these persons have themselves made an objection or not.

The objection is through the use of Form N. A plain reading of the said section would envisage a situation where no Form N has been filed the court would still be obliged to consider the interest of all persons interested who have not accepted the award.

- b*
- c* In *Maorgate Mercantile Co. Ltd. v. Twithings* [1976] 1 QB 725 Lord Denning is reported to have said that estoppel is not a rule of evidence, not a cause of action but a principle of justice and equity. "It came to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so."

- d* The second applicant did not put in the valuation report for reasons not known to the court but has the first applicant been led "to believe in a particular state of affairs." Has the second applicant led the first applicant to believe that they would not file Form N just because the second applicant did not put the valuation report.

- e* In the case before me I ask myself further whether it would be unjust or inequitable to let the second applicant to file the Form N when the enquiry was only an enquiry and that the decision by the Land Administrator was administrative. It is my finding that a great injustice would be done to strike out the second applicant from being heard in the High Court as the award and compensation was only an offer and not final.

- f* It is for the parties to accept the offer.

- g* In this case, the second applicant was present at the enquiry on 10 December 1998. In his decision, the Land Administrator decided that any party (jika ada pihak) who is dissatisfied on the award and offer of compensation can file Borang N under s. 38 LAA 1960.

- h* I am accepting the fact that the construction of the highway is of public interest and the "Government could not be questioned by a civil court" – see *Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines, Penang* [1977] 2 MLJ 45.

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Section 3(1) of the LAA 1960 states that the State Authority “may acquire any land which is needed: *a*

(b) by any person or corporation for any purpose which ... is beneficial to the economic development of Malaysia

It is a matter of fact that our Government has privatised many projects to private bodies. The acquisition of the two lots of land was for the LLM. Hence LLM’s presence at the enquiry. In fact LLM had to pay for the land acquired by the Government. The second applicant is allowed by licence to collect toll on the use of the road built and after some time surrender the completed road to the Government. As the body that has to meet the award and offer of compensation, LLM would definitely have a say in the finding of the Land Administrator. *b*
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The Federal Court in *Bandar Builder Sdn. Bhd. & Ors. v. United Malayan Banking Corporation Bhd.* [1993] 3 MLJ 36 Held at (1): *d*

(1) The principles upon which the court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it ‘obviously unsustainable’. It cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence. *e*

On the question of O. 92 r. 4 1980 Rules of High Court 1980, the Federal Court in *Permodalan MBF Sdn. Bhd. v. Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors.* [1988] 1 MLJ held at p. 181: *f*

We read this to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to prevent any injustice or any abuse of its own process. It follows that where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers. *g*

In another case the High Court held that:

Held (5) The inherent jurisdiction of the court under O. 92 r. 4 was a procedural rule and was not intended to alter substantive rights. It must be applied to do justice to the parties and to secure fairness in a trial between them but not for any other purpose such as taking away the substantive rights of the plaintiff in this case. *h*

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a To strike out the second applicant's application would be to take away his rights as stated in s. 44(2) LAA 1960. It is my finding that this is not a proper case to use the provisions in the Rules of High Court 1980 to strike out the second applicant's reference.

b It is for the reason stated above I dismiss the first applicant's case with costs. The costs to be taxed forthwith and paid forthwith too.

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